
In the Supreme Court of the U. States.

IN PRIZE.

CAUSES Nos. 134, 163, 170, 261, 262, 263.

BRIEF FOR THE UNITED STATES, RESPONDENTS IN THE SEVERAL
APPEALS.

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SUPREME COURT OF THE UNITED STATES.

IN PRIZE.

No. 134.—SCHOONER BRILLIANT.

Rafael Preciat, Appellant,
vs.
United States, Respondents. } Breach of Blockade.

No. 163.—THE CRENSHAW.

John Currie et al., Appellants,
vs.
United States, Respondents. } Enemy Property.

No. 175.—THE HIAWATHA.

Peter Miller et al., Appellants,
vs.
United States, Respondents. } Breach of Blockade.

Nos. 261, 262, 263.—THE AMY WARWICK.

William Currie et al., Appellants,
vs.
United States et al., Respondents. }

Robt. Edmonds et al., Appellants,
vs.
United States et al., Respondents. } Enemy Property.

Jas. W. Dunlop et al., Appellants,
vs.
United States et al., Respondents. }

BRIEF FOR THE UNITED STATES.

CHARACTER OF THE CASES.

The decree of condemnation in the case of the Hiawatha proceeds upon the general ground that the blockade of the port of Richmond, Virginia, established on the 30th of April, 1861, was, at the time of her capture in May, 1861, valid to all intents and purposes as a blockade in time of war under the Law of Nations.

The condemnation in the cases of the Crenshaw and the Amy Warwick and their cargoes assume that the commerce of the same

port and commercial property belonging to and forming a part of such commerce were, at the time of the captures, liable to condemnation as enemy property.

The special facts incidental to each of the cases of these three vessels are stated in other Briefs filed for the Government in these causes, and need not be repeated here.

The case of the *Brilliant* seems very plain. Both vessel and cargo are of foreign ownership.

It appears by the decree of condemnation, and also by the testimony in the court below, that the schooner *Brilliant* entered the port of New Orleans about the first of June, 1861; knowing that port to be then under blockade established by the President of the United States: that before entering she was warned off: that after entering she took on board a cargo: and that she was captured on or about the 23d of June, 1861, by a vessel of the blockading squadron, in attempting to come out of that port in breach of the blockade.

It is understood to have been admitted by the claimant in the court below that there was no defence in the case if the blockade of the port of New Orleans, as established by the President of the United States was valid in law. The case comes up from the district court of the United States for the Southern District of Florida, to test that single question.

The following statement and points are intended solely to present and establish the general grounds of right in law upon which the captures and condemnations have proceeded in all the cases.

STATEMENT AND POINTS.

I. At the time of these captures and condemnations a great population, within the acknowledged territorial limits of the United States, and then and now bound in law to render allegiance to the supreme Government of the United States, occupied in collective inhabitancy, extensive districts of country fronting on the high seas; and this population, in violation of its lawful allegiance, and in actual insurrection and rebellion against the lawful authority of the Government of the United States, was then, and is now, combined and acting collectively as a body politic in obedience to the unlawful and usurped dominion, and in the forms, both State and Federal, purporting to be the complete political and military organization and action of an independent and supreme Government, foreign to the United States, founded upon and representative of the will of the people, and republican, constitutional, and confederate in its character and administration.

This rebellious and organized combination, pretending to constitute a Government and a people, and as such claiming recognition and invoking foreign intervention, had then exacted and

enforced, and is now exacting and enforcing the sole and exclusive allegiance of all the inhabitants composing the entire resident population of the districts of country before mentioned over which it, in fact, then bore, and now bears, sway. It had then and has up to this day in fact, and in pretence of law, excluded by armed force from those districts of country and effectually prevented throughout their whole extent, and among all the inhabitants thereof, all peaceable exercise and administration, judicial or other, of the lawful civil authority of the Government of the United States, and all peaceable submission to such authority. It had then not only commenced open and active hostilities against the Government and people of the United States, but it had also assumed to declare, in due form of law, and in the name and behalf of all the population so combined in collective allegiance to its usurped authority and jurisdiction as a government, public war against the Government and people of the United States; and it was then, and is now, in pursuance of such declaration, waging open hostilities, on a large scale, by land and sea, with all the outward belligerent array and pretensions of foreign and formidable public war aimed at the subversion of the authority of the Government of the United States and the dismemberment of the territory of the United States by conquest and permanent adverse possession and jurisdiction.

This war of rebellion thus declared and waged against it, the Government of the United States, to the ends contemplated, and in the manner and form prescribed by the Federal Constitution and the laws of the United States, made in pursuance thereof, and for such case of rebellious hostilities provided, recognized and opposed from their commencement, and is now opposing with its military power, both land and naval, in order to suppress by such power of war the whole collective insurrection and rebellion thus organized and operating as a hostile government and body politic *de facto*.

Proclamations of President Lincoln of April 15th, 19th, and 27th, and May 2d, 1861: in connection with his message to Congress July 5th, 1861: Proclamation of Commodore Prendergast April 30th, 1861.

Compare, in illustration, Constitution of Confederate States, adopted February 8th, 1861, Rebellion Record, p. 29: also Act of Confederate Congress recognizing a state of war, published May 6th, 1861: also Proclamation of Jefferson Davis with reference to Letters of Marque; Messages of Jefferson Davis, at Montgomery, 29th of April, 1861, and at Richmond July 20th, 1861, and November 16th, 1861; Proclamation of John Letcher, Governor of Virginia, publishing, on 25th April, 1861, Ordinance adopted on that day by the Convention of that Commonwealth "for the adoption of the Constitution for the Provisional Government of the Con-

federate States of America," together with "Convention between the Commonwealth of Virginia and the Confederate States of America," signed on 24th April, 1861, and adopted by the Convention of Virginia on the 26th April, 1861: Proclamation of same Governor of 17th April, in execution of Ordinance of same Convention of the State as to preparation of military force of the State for "immediate service." *Annual Cyclopaedia*, 1861, New York, 614, 621, 736, 735.

Compare also, in illustration, Secession Ordinances and Resolutions of the States of Virginia, South Carolina, Louisiana, Florida, &c., as produced in evidence in the Court below in the cases of the *Hiawatha*, *Crenshaw*, and *A. Warwick*.

Hautefeuille Questions sur la guerre d'Amerique, &c. Paris, 1862.

Twiss., Law of Nations, London, 1861. Tit. Confederate States of America.

II. These facts, arresting from their inception the attention of governments and nations, have already passed into history as great public events. Their legal character and effect, and the whole *Status in Law* resulting from them, are fixed and ascertained by a body of authority which may properly be called the collective public policy and law of the civilized world.

This authority is found:

1st. In the text of the Constitution of the United States as elucidated by the events and discussions connected with its establishment:

2d. In Statutes of the United States and executive measures connected with their enactment and execution:

3d. In adjudications of the highest courts of the United States both prior and subsequent to the adoption of the Federal Constitution:

4th. In the Constitutional structure and action of the governments of the several States united under the Federal Constitution-

Const. 1 Stat., p. 424. 2 Stat., p. 443. Sess. Laws, 1st Sess. 37th Con., Chaps. 9, Secs. 1, 5, Chap. 17, Sec. 2, Chap. 50, Chap. 63. Id. 2d Sess. 37th Cong. Chap. 195, Secs. 4, 5, 7, 9. Id., Chap. 201, Secs. 3, 13. Id. Res. 63, p. 627. Id. Res. 12, p. 613. Id. Chap. 133, Sec. 6.

Respublica vs. Chapman, 1 Dall., 59. *Pennhallow vs. Doane*, &c. 3 Dallas, 54. *Rose vs. Himely*, 4 Cranch., 241. *Ware vs. Hylton*, ib., 228. *Martin vs. Hunter's Less.*, 1 Wheaton, 363. *Luther vs. Borden*, 7 How., 45. *Cross vs. Harrison*, 16 How., 164. *Mar- vs. Mott*, 12 How., 19.

5th. In the rules of the common law and of the civil law:

6th. In the sense of all the publicists expounding and laying

down the law of nations, and in the judgments of the courts of admiralty of Great Britain, and of the judicial authorities of other nations, judging under that law:

7th. In the practice of governments, and specially in the action of federative governments, in relation to organized and armed rebellion:

8th. In the official proclamations and public acts of the great powers of the world, elicited by, and relating to these and other similar hostilities:

Co. Litt., 249 b. 1 Knapp, 346, 360, 361. 1 Hale, P. C., 162. Dig. 49 to 15, s. 24. Id. L. t. 16. s. 118. See 2 Phillimore, p. 119. For the exercise by the Romans of the rights and powers of war against the revolted City of Capua. See Livy, Book 26, c. 17.

See Grotius Lib. 1, c. 1. Lib. 3, secs. 1, 4. Vattel Lib. 3, c. 18, sec. 295. Wheat. Law of Nations, 365. 1 Riquelme Der. Int., 172. De Marten's Precs, c. 3., sec. 263. (But all the Publicists speak with one voice.)

See Germanic, Helvetic, and Argentine Confederations. Twiss. Law of Nations, chap. 3. Same titles in 2 Phillimore.

Proclamation of Queen Victoria, May 13, 1861, and of Emperor of the French, June 11, 1861, and Queen of Spain, June 17, 1861.

Cherriot vs. Foussat, 3 Binney, 262. Dobrie vs. Napier. 3 Scott's R., 225. U. S. vs. Palmer, 3 Wheat., 635. San. Trin., 7 Wheat., 306. 3 Wheat. App. Boedes Lust, 5 Rob., 246.

Ex parte, In Re E. A. Stevens. Opin. MS. Mr. Justice Wayne.

Compare—*In Re Don Joseph Bonapart*, King of Spain and the Indies. Claimant, &c., &c., Conseil d'Etat, 19 Jan, 1811.

Decree—Ships and goods of *revolted subjects* of one sovereign captured at sea, are good prize of war as *enemy property* to the cruisers of the *ally* of the sovereign against whom the revolt is made. Such rebels being *enemies*, both of their own sovereign and his ally. Pistoye & Duverdy, Traité des Prises. Tom. 1, p. 327.

See also the case of the Carlo Alberto. Cour de Cassation, 8 Sept., 1832. Neutral vessel—chartered to bring the Duchesse de Berry and suite to Marseilles—under color of destination to Barcelona. Put into French port in distress—captured and condemned as *enemy vessel and goods*, because instrumental in aiding designs of French subjects accused as conspirators against France—some of them carried as passengers. Id. Tom. 1. p. 328.

III. By these authorities, pertinent in their respective mode and measure of direct application or manifest analogy, it appears that these hostilities constitute in law a *state of Civil War*, recognized by the Government of the United States and by foreign governments and having legal effect, as follows :

1st. To invest the Government of the United States, in its policy towards the rebellion, and in its foreign relations as affected by that policy, with all belligerent rights and powers, pertaining under the law of nations to governments recognized as supreme and independent and engaged in public war:

2d. To impose upon all the people, acknowledging and yielding collectively, and as bodies politic, allegiance to the Government of the United States, the obligations and restrictions incident to such belligerent condition of their government:

3d. To subject to the legal disabilities and perils and penal consequences pertaining to the character of enemies of the United States, the whole rebellious and unlawful organization above described as a body politic *de facto*, including communities yielding allegiance to it as a government and living under its rule, and to impress the character of enemy country upon all the ports and places and districts of country held in fact and in form of hostile, civil jurisdiction, under its civil authority or that of its allies, to the exclusion in fact of the civil authority of the Government of the United States; and,

4th. To leave to the supreme Government of the United States its whole constitutional authority, to be exercised at its discretion throughout the territorial limits of the United States, in due form and force of law, both during the war and afterwards, upon all persons engaged or implicated in the rebellion or in its organization, either in violation of their lawful allegiance to the Government of the United States or in offence against its laws.

IV. The Government of the United States has therefore rightfully put into operation at the same time against the whole rebellion as above described, the rights and powers, and lawful methods and usages of public war on the one hand, and on the other, its Constitutional authority in Legislative, Executive, and Judicial forms of penal action. Both these modes of procedure belong to a state of Civil War arising out of rebellion, and their concurrent adoption by the Government of the United States marks the character of such war, and conforms to the usage of nations and to the public law. The rebel is not merely an enemy, but is also a criminal, and therefore penal law and public war legitimately combine to suppress him and his power. The two methods of action, instead of conflicting, co-operate, and instead of invalidating or excluding, strengthen and sanction, each other. Precisely because rebellion wages war against government, special statutes of restriction, forfeiture, and penalty to suppress it, are made and justified. Precisely because such public danger demands and justifies such unusual statutes, the presumption arises that they alone may not suffice, and that the right and the force of public war by the government cannot be spared, and are lawfully exercised. In this view Congress, at its special session commencing on the 4th of July, 1861, in sev-

eral statutes expressly recognized the war as already existing, provided the means for its prosecution, and legalized retrospectively all the acts and proclamations of the President in regard to the employment and increase of the military and naval force; and at the same time passed laws prescribing and regulating special civil and criminal proceedings against the rebels and their property, some of them to apply absolutely, and others at the discretion of the President, but all of them not only leaving unimpaired, but aiding the exercise of belligerent rights and powers by the government.

Compare also in this connection the Act 16, Geo. 3, c. 5, (passed at 2d sess., 14 Parl., which closed October 26, 1775,) to take effect January 1st, 1776. In its recitals; in its declaratory clauses; in its enactments, prospective and retroactive; in its saving and specifying provisos; as judicially construed and applied contemporaneously in British courts of admiralty, and subsequently expounded judicially in this court; this Act presents impressive exhibition of public policy and authority of established government operating in civil war, by the *jus belli*, recognized by the act as previously in force, and by the *jus civile*, applied in the Act, against alleged rebellion usurping by force and fact of arms the powers of government; and against great districts of country partially or wholly under such alleged rebellious and usurped sway; and against all the inhabitants thereof; and against all their maritime commerce in its incidents of vessels belonging to them, and their cargoes and ships' companies; and against all other vessels and cargoes and ships' companies, wheresoever found, trading or going to trade or coming from trading in any of the ports and places within such districts.

See also Militia Act 16, Geo. 3, C. 3; also Privateers' Act 17, Geo. 3, C. 7; also Act 17, Geo. 3, C. 9, *reciting first*, "a rebellion and war openly and traitorously levied and carried on in certain of His Majesty's colonies," &c., and *secondly*, "acts of treason and piracy committed on the high seas and upon the ships and goods of His Majesty's subjects," &c.

As to Act *ut supra* 16, Geo. 3, C. 5, see *The Dickinson*, Hay & Mar., 1; *The Sally*, *id.* 94; *The Louisa*, *id.* 146; *Ware vs. Hilton*, 3 Dall., 228; *Penhallow et al. vs. Doane's adms.*, *id.* 54.

The General Parkhill and cases there cited. Cadwalader, J.

Compare instructions issued to the ships of war under his command on the North American station by Admiral Graves during the year 1775, before the passage of the Act 16, Geo. 5, c. 5—cited in the case of the *Boston Packet*. 1 *Prize Cases in War*, folio, without title page. A collection of records and statements of cases—not paged. The *Boston Packet* is the 4th case in vol. 1 of the collection.

Compare also *The Providence of Boston*. Pratt's Law of Con-

traband of War, with selections from Sir Geo. Lee's unreported decisions, London, 1862, 1 vol., page 82. This is an interesting case in the High Court of Admiralty, in the year 1746. Vessel and cargo condemned as lawful prize to the captors—captured by a man-of-war for trading with the rebels in the Orkneys, having contraband of war on board.

V. At the time of these captures and condemnations all the ports and places, the character of which is under consideration in these causes, had been solemnly declared to be enemy country, and were held and ruled as such in declared and active hostility against the Government of the United States by all the civil authority exercised and bearing sway in fact within their limits; and this civil authority was fully organized and enforced in all the forms of a supreme and independent government *de facto*. The Government of the United States, in the manner and form prescribed and enjoined in such case by the Constitution and laws, was then avowedly exerting its power of public war, by land and sea, to subdue and suppress this rebellious and hostile government *de facto*, and to wrest these ports and places and their inhabitants out of its hostile possession and control. Thus these ports and places so possessed and controlled had been determined to be enemy country by public act of all the political authority having or claiming to have right in law or force in fact to fix and determine their character. This determination *de facto* and *de jure* of the enemy character of these ports and places is in conformity with public law, and under the rule of adjudication early established by this court, and always adhered to, is conclusive.

VI. Therefore, at the time of these captures and condemnation, all the maritime trade and commerce of these ports and places, and of their inhabitants, and all property belonging to or engaged in such commerce, and all maritime commercial intercourse with them, were subject to the restrictions and liabilities affecting under the law of nations in time of public war commerce and commercial property of enemies of the United States, and such commercial intercourse with such enemies, and were additionally subject to all the special penalty, peril, and forfeiture constitutionally prescribed by statute. The whole law of maritime capture and prize *jure belli* in its full rigor, as established by the law and practice of nations, was then justly applicable by the Government of the United States to all such commercial intercourse, and to all such commercial property in its incidents of ship and cargo.

VII. Absolute interdiction of all maritime commerce with all such rebellious and enemy ports and places being the manifest right and duty of the Government of the United States, blockade, even in its most stringent form and severe application, compatible with the law of nations, could be only a mild and liberal exercise of that

right. Its institution and establishment by the President of the United States, acting with full constitutional and statutory authority to that effect, were valid under the law of nations and of the United States, and have been since legalized by Congress in a statute expressly retroactive to that effect, and therefore all infraction, either actual or constructive, of such blockade so established and duly maintained, must subject the vessels and cargoes in anywise legally implicated in such offence to condemnation as good prize of war.

As to effect of occupation and possession by an insurrectionary and unrecognized Government upon the character, as hostile or friendly, of ports and places;

Compare, *The Manilla*, 1 Edwards' Rep., 1; *Fleming vs. Page*, 9 How, 603; *United States vs. Rice*, 4 Wheat., 247; *Gerasimo*, 11 Moore, P. C., 101; *Bentzson vs. Boyle*, 9 Cr., 195.

As to effect of residence in enemy country, and trading with enemy—and enemy property—See *Venus*, 8 Cr., 280. *The Hoop*, and cases cited there, 1 Rob., 196.

VIII. Upon this statement of facts and legal consequences resulting from them, as shown in the authorities above cited, we submit as conclusions the following points:

First Point. By public act of the Government of the United States, in its several departments, it is judicially known to this Court, that our present "conflict of arms" is now and was at the time of these captures, a civil war, waged against the United States by a rebellious and usurping government *de facto*: and that the full belligerent right resulting to the United States from such civil war, so waged, has been exercised in the lawful establishment of blockade, under the law of nations, of the ports and places held and ruled by such government *de facto*.

Second Point. That such belligerent establishment and maintenance of such blockade is deemed lawful and obligatory upon foreign nations by all the great powers of the world and by this Government, and is lawful.

Third Point. That the belligerent right so to blockade any port or place by reason of such enemy possession and rule thereof, implies and necessarily includes the belligerent right to subject the commerce and commercial property of such port or place, including commercial intercourse with the same, to the rule of maritime capture as prize of war according to the law of nations.

Fourth Point. That at the time of these captures Richmond and New Orleans were such enemy ports and places so held and possessed, and so blockaded by belligerent right; and that therefore these captures and condemnations for breach of such blockade and of ships and cargoes as enemy property are of public right in law; and the decrees of condemnation should be affirmed.

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